

Procreation a losing argument for Marriage Rights

By John Sonego

Those who advocate that marriage should be reserved purely for the purpose of procreation have argued themselves into a corner. If they truly want that as a standard, then it should apply it to everyone.

When a California appellate court heard arguments about the state's ban on same-sex marriage this week, attorneys argued a tired mantra long championed by same-sex marriage opponents: Gays should not be allowed to marry because they can't procreate (at least not naturally). No matter that California Superior Court Judge Richard Kramer dismissed that claim in 2005, finding the ban on same-sex marriage unconstitutional. Kramer noted that opposite-sex couples don't have to have children in order to marry, while gay families are blocked from the institution no matter how many children they have or might produce.

An ability to procreate, therefore, was not germane to the argument.

But that didn't stop California deputy attorney general Christopher Kreuger from recently making it again. It was also one of the arguments that led to New York's Supreme-Court to rule against same-sex marriage a week ago, and has been used in a number of other same-sex-marriage-related cases across the country.

Clearly, procreation is top-of-mind when marriage comes up before the courts. At least concerning same-sex marriage. That got me to thinking.

If our legal system consistently asserts that the fundamental purpose of marriage is procreation, then shouldn't it apply to all marriages equally, no matter the sex of the persons involved? After all, fair is fair. Any smart lawyer could make that case.

But a consistent application would have some unintended consequences. It would automatically:

- * Nullify the marriages of about 10% of opposite-sex couples in this country. That's the percentage of couples that want kids but can't get pregnant. Some of those seek out infertility treatments if they can afford to do so, but one could argue that since those treatments aren't "natural," the procreation standard does not apply.

- * Nullify the marriages of opposite-sex couples that have no desire or intention to have children. American Demographics magazine estimates that the number of childless couples in the U.S. will reach 31 million by 2010. A decision to marry based on the legal protections of marriage, like Social Security benefits, the ability to make medical decisions, inheritance rights, etc., would not be compelling enough.

- * Nullify the second (or third) marriages of households where one of the partners has children by a previous marriage and has decided not to have a child with their current spouse. According to the 2000 census, there are about 1.5 million American stepfamilies in that situation.

- * Nullify marriages where the only children in the household are adopted, not "naturally" created by the household parents. With procreation as the standard, kids created by other people don't count. That would eliminate another 816,000 couples, based on the 2000 census.

- * Nullify the marriages of seniors who marry when procreation is nothing but a cherished memory. While there's no reliable data available about the number of postmenopausal newlyweds, one shocking bit of evidence has surfaced: Over 20% of unmarried couples living together qualify as AARP members. They've chosen to shack up in their golden years.

Clearly, a lot of otherwise happy marriages might be eliminated under this standard. But the question is, Do Americans really think marriage is primarily about procreation? I don't think so.

Nearly two thirds of married men interviewed in a 2004 Rutgers University study, “The State of Our Unions: The Social Health of Marriage in America,” claimed readiness to have children didn’t figure prominently in their decision to marry. Just 35% believed “you get married because you were ready to have children.” That tracks with a 1999 General Social Survey social change report conducted by the University of Chicago, “The Emerging 21st Century American Family”: Nearly 70% of Americans indicate they do not believe the main purpose of marriage is to have children.

In spite of this overwhelming majority, extremists continue to make the procreation argument, sometimes with reasoning that borders on the absurd. Ken McElroy, a vocal procreation proponent, trips over himself in an essay in the *American Federalist Journal*: “We make laws based on the rule, not the exception. There is no reasonable way for the government to discern when a male-female couple applies for a marriage license whether that couple will bear children in the future.”

It’s the proverbial catch-22. Procreation is the driving guideline for marriage, but the state can’t determine if every couple’s future is fertile. Even so, the impetus for procreation requires some baseline qualifier; a perfunctory physical once-over is sufficient to allow heterosexual couples to marry. A low sperm count or endometriosis be damned.

McElroy and his cronies have argued themselves into a corner. It’s time they admitted what the rest of us figured out long ago. The arguments to deny same-sex couples the rights and responsibilities afforded to opposite-sex couples are, at their core, expressions of prejudice, pure and simple.

They should admit that and get on with it—or agree that the only truly fair way to deal with the issue is to apply their standard to every couple, gay or straight, equally and without prejudice or favor.

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